Supreme Court, U.S.
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No. 96-5658

In The

Supreme Court of the United States

October Term, 1996

CARY MICHAEL LAMBRIX,

Petitioner,

vs.

HARRY SINGLETARY, SECRETARY,
FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

REPLY BRIEF OF PETITIONER

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ARGUMENT

AFTER CORRECTING THE LOWER COURT'S ERRONEOUS APPLICATION OF *TEAGUE V. LANE*, THIS COURT SHOULD REMAND THE CASE FOR PROCEEDINGS CONSISTENT WITH THE COURT'S OPINION

The only matter raised in the brief of Respondent or in that of *Amicus Curiae* that requires a response is Respondent's invitation for the Court to reach beyond or around the question on which *certiorari* was granted and find that Mr. Lambrix's claim is procedurally barred, an issue on which Mr. Lambrix prevailed in the district court. For the reasons that follow, this Court should reject that invitation.

In the district court, Respondent contended that Mr. Lambrix had abandoned his *Espinosa* claim on appeal of the denial of his motion to vacate his conviction and sentence pursuant to Florida Rule of Criminal Procedure 3.850, because – while under death warrant – he had not specifically briefed the issue. Mr. Lambrix contended that there was no procedural default ruling by the state courts in the Rule 3.850 proceedings, but that if there had been such a ruling, it would not have been an "adequate" state procedural bar because he had followed a recognized and previously sanctioned practice in proceedings under death warrant in Florida by filing a motion for stay of execution in the Florida Supreme Court and attaching thereto the pleadings from the trial court. *See* Florida Rule of Appellate Procedure 9.140(g) (appellant not required to file a brief following the summary denial of Rule 3.850 motion). The district court found that the state trial court had denied Mr. Lambrix's claims "on the merits," J.A. 71; that there was no imposition of any

procedural bar by the Florida Supreme Court; and that any procedural bar would not have been based upon an adequate state ground, given the practice and rule in Florida. J.A. 76-79. In the Eleventh Circuit, Respondent again argued a procedural bar.[1] The court of appeals did not rule on the State's argument, as it decided only the State's defense based on *Teague v. Lane*, 489 U.S. 288 (1989).

Thus, *no* court has ruled on the adequacy and independence of the procedural bar relied on by the State in this Court. In these circumstances, the appropriate course is to remand to the Eleventh Circuit, which is best suited to rule on the issue in the first instance. *See Stringer v. Black*, 503 U.S. 222, 226-27, 237 (1992) (remanding for further consideration after reversing Fifth Circuit's *Teague* ruling in case in which the district court had found the claim procedurally barred, but the Fifth Circuit had not considered the question). Moreover, it is clear that a resolution of Respondent's procedural bar contention will require a detailed analysis of Florida law and of the Florida courts' practices in post-conviction proceedings as they have evolved over a period of time. This Court

[1] In the Eleventh Circuit, after a remand by that court to allow the Florida courts the opportunity to consider again the merits of Mr. Lambrix's claims after *Espinosa v. Florida*, 505 U.S. 1079 (1992), the State relied principally on the argument that Mr. Lambrix's claims were barred because the Florida Supreme Court's decision on remand said so. *Lambrix v. Singletary*, 641 So. 2d 847 (Fla. 1994). Mr. Lambrix contended that this "bar" was not binding because, *inter alia*, the Florida courts had already once ruled on the merits of his claims; that the subsequent procedural ruling did not alter that; and that the latter ruling constituted a *post hoc* revision of earlier Florida practice.

has repeatedly said that it does *not* sit to decide in the first instance issues that are entangled in state law in this way, because such issues are better and more efficiently adjudicated by the lower courts. *See, e.g., Butner v. United States*, 440 U.S. 48, 57-58 (1979) (lower courts better suited to decide questions of state law); *Burks v. Lasker*, 441 U.S. 471, 486 (1979) (case remanded where neither the district court nor the court of appeals had decided question of state law); *Marrese v. American Academy of Orthopedic Surgeons*, 470 U.S. 373, 386-87 (1985) (remand where parties disagreed about content of state preclusion law). That is particularly true where, as here, the state-law issues are not implicated in the federal question that this Court has granted *certiorari* to decide, but are simply put forward as the prop for an alternative ground to support the judgment below. It is discretionary with this Court whether to "remand the case rather than deal with the merits" of any such alternative ground, *Dandridge v. Williams*, 397 U.S. 471, 476 n.6 (1970); *Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80, 86 (1988), and the Court has been particularly loath to rule upon proffered alternative grounds where the questions have not been resolved below and where they involve complex issues dependent on state law. *Id.*; *see also G.D. Searle & Co. v. Cohn*, 455 U.S. 404, 413-14 (1982).

Therefore, this Court should not consider the State's procedural bar defense but should leave consideration of it to the court of appeals after reversing that court's erroneous holding that Mr. Lambrix's claims under *Espinosa* are barred by the doctrine of *Teague v. Lane*, 489 U.S. 288 (1989).

CONCLUSION

For the reasons set forth above and in Petitioner's initial brief, this Court should reverse the decision of the court below and remand for further proceedings.

Respectfully submitted,

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